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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,863	07/14/2000	KEITH DOUGLAS PERRING	LP4285	2545

23906 7590 06/06/2002

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

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DATE MAILED: 06/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/509,863

Applicant(s)

PERRING ET AL.

Examiner

Jeremy R. Pierce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 cites the limitation "unworn fabric". It is unclear what this limitation means. Is it a garment that has not been worn? Does it mean unused? Does it mean used, but not frayed?

Claims 1-11 are indefinite because claims merely setting forth physical characteristics desired in an article and not setting forth specific compositions, which would meet such characteristics are invalid as vague and indefinite because they cover any conceivable combination of ingredients, either presently existing or which might be discovered in the future. Claims 1-11 would impart desired characteristics too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition and, in effect, recites compounds by what it is desired that they do rather than what they are. *Ex parte Slob*, (PO BdApp) 157 USPQ 172. In this case, the desired characteristics include octanol/water partition coefficient values and gas chromatographic Kovats index values.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ono et al. (U.S. Patent No. 4,882,220) in view of Brekkestran et al. (U.S. Patent No. 5,008,517).

Ono et al. provide fibrous structures to which microcapsules encapsulating a perfume are adhered in an amount of 0.3 to 7.0% based on the weight of the fibrous structure (column 2, lines 42-53). Ono et al. disclose using geraniol and nerolidol as two possible fragrances for use in depositing onto the fabric (column 6, lines 17-31), which qualify as Category A' fragrances according to the Applicant's disclosure, thus meeting the octanol/water partition coefficient and Kovats index values. Ono et al. also teach the fragrances make up 5 to 99% by weight of the microcapsule. Ono et al. disclose several different fiber types that can be used in making the fabric, including various nylons and polyesters (column 4, lines 44-63), and also teaches applying the fragrance to stretch fabrics (column 26, line 7). However, Ono et al. fail to teach incorporating spandex fibers into the fabric material for fragrance coating. Brekkestran et al. teach incorporating spandex fibers into fabric material produces a fabric with stretchable and elastic qualities. It would have been obvious to one skilled in the art to incorporate spandex fibers into the fabric provided by Ono et al. in order to provide a

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fabric with improved elasticity. With regard to claim 2, it would have been obvious to one skilled in the art to have the weight percent of spandex fibers incorporated into the fabric be between 0.5 and 50% in order to produce a fabric with the desired degree of elasticity, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). With regard to claims 3, 10, and 11, the fragrance material would inherently be incorporated onto the spandex fiber in the fabric taught by Ono et al. in view of Brekkestran et al. With regard to claim 7, Ono et al. disclose the perfume is preferably applied to the fabric in the finishing step (column 8, lines 52-58).

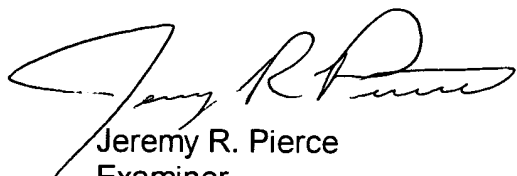
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

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Jeremy R. Pierce

Examiner

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May 29, 2002



ELIZABETH M. COLE
PRIMARY EXAMINER